

AMENDMENT
Serial No. 10/804,736
Docket No. ECI06-GN017

REMARKS

Introductory Comments

Claims 1-23 are pending in the present application. Claims 1-4, 6-8, 11, 16-21, and 23 have been amended. Reconsideration of the application is respectfully requested.

35 U.S.C. §112 Rejections

Claims 10-15 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. More specifically, the Examiner alleges that it is indefinite for the preamble of claim 10 to recite an intended use, while the body of the claim positively claims structure that limits the claim to a single use. This ground of rejection is respectfully traversed.

Applicants respectfully submit that the limitations recited in claims 10-15 are clear regarding what structures Applicants intended to claim and are wholly consistent with the requirements of 35 U.S.C. §112, second paragraph. Nothing within the body of claim 10 recites a structure that requires a lid because the first time that any limitation appears that requires a lid structure is found in claim 11. In fact, the Examiner notes in the Office action that the preamble of claim 10 implies an intended use; a preamble that only recites an intended use is certainly not a claim limitation.

The claim preamble in claim 10 is not required for patentability and therefore issues of definiteness are not relevant. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. See M.P.E.P. §2111.02; *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999); *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997) ("where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation"). This is precisely the case with respect to claim 10, which confirms that the rejections of record are in err.

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Moreover, the Examiner's conclusions are further belied by the doctrine of claim differentiation.

The doctrine of claim differentiation compels the conclusion advocated by Applicants that claim 10 does not require a lid as part of its required structure. "Under the doctrine of claim differentiation, dependent claims are presumed to be of narrower scope than the independent claims from which they depend." *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1242 (Fed. Cir. 2003). If the Examiner's conclusion were correct, which it is not, the scope of claim 10 and claim 11 would be virtually identical. Claim 11 for the first time recites a lid structure, which under the doctrine of claim differentiation presumes (which is correct) that claim 10 encompass a structure where the lid is not part of the valve assembly. Simply put, it is impermissible to read into claim 10 a limitation that is explicitly recited in claim 11.

For at least these reasons, the rejection of claims 10-15 is clearly in err. Reconsideration and withdrawal of the 35 U.S.C. §112, second paragraph, rejections of record for claims 10-15 are respectfully requested.

35 U.S.C. §102 Rejections

Claims 1-23 stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by WIPO Published Patent Application WO 99/47029 to Rohrig ("Rohrig DE"). Because Rohrig DE is in the German language, Applicants have utilized U.S. Patent No. 6,758,364 to Rohrig ("Rohrig") as a basis for the what Rohrig DE discloses. It should be noted, however, that Applicants reserve the right to challenge the disclosure of Rohrig DE in light of the Examiner relying on Rohrig DE, but failing to provide a certified translation of the same. Nevertheless, this ground of rejection is clearly overcome by the amendments to claims 1-4, 6-8, 11, 16-21, and 23.

It is respectfully submitted that the rejections of claims 1-23 are prefaced on an incorrect interpretation of the claim limitations, as well as a misunderstanding of the embodiments disclosed in Rohrig. Understanding the embodiments of Rohrig is half the battle to understanding why Applicants claims are clearly patentable over Rohrig and Rohrig DE.

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Rohrig discloses a valve seat 5 mounted to a valve body 6, where the valve body includes longitudinal slots 15 that are in communication with fluid within a container and the underside of a circumferential sealing lip 7. As suction is applied to the drinking spout 13, the circumferential lip 7 displaces from the valve seat 5 and allows fluid to pass between the lip 7 and seat 5 and exit through the spout 13. Contrary to the understanding recited in the Office action, hole 24 is not required to allow fluid to pass through the spout 13, nor is the sealing aspect of the assembly to inhibit fluid egress carried out at any location other than between the lip 7 and valve seat 5.

In light of a proper understanding of the disclosure of Rohrig, it is clear that Rohrig fails to disclose a collapsible tower where one of the walls of the tower collapses before a second wall as recited in claim 1. The structure that the Examiner identifies as the collapsible tower 12 of Rohrig is in fact not collapsible. Rohrig discloses that the "displacement body is hollow (for cleaning purposes it could, however, also be solid)... ." (Col. 7, ll. 8-9). In other words, if the structure 12 was solid, it would still function, but would beyond question not collapse. Thus, it can be reasoned that the structure 12, even if hollow, does not collapse. In addition, for the structure to collapse, one must apply a force to make it collapse, which is certainly not disclosed by Rohrig. In direct contrast, Rohrig discloses that when a lower pressure force is applied to the spout 13, the lip 7 is displaced from the valve body 5. In sum, Rohrig does not disclose a collapsible tower and likewise fails to disclose many of the other limitations recited in claims 1-9. For example, contrary to the assertions in the Office action, Rohrig does not utilize a thicker lower portion to seal the openings 15; these openings 15 are always open.

Claim 10 also recites a valve body that includes unaugmented and reinforced sections thereof that are displaced to establish an exit orifice between the valve body and valve seat. Again, Rohrig fails to disclose such a structure.

Claim 16 recites a valve seat that includes a radial passageway, where the radial passageway is selectively opened by collapsing a first wall adjacent to the passageway after a second wall spaced from the passageway collapses. Again, Rohrig fails to disclose dual collapsing walls in succession, and assuredly fails to disclose a structure having a radial passageway. Rohrig's only passageway that is selectively opened or closed is longitudinal between the lip 7 and valve seat 5.

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Claim 21 recites a method of regulating flow by utilizing a collapsible tower having one wall that collapses markedly before a second wall. Absolutely nothing in Rohrig discloses such a method and absolutely nothing in Rohrig provides a basis for one skilled in the art to extract such a teaching.

In light of the clear deficiencies in the disclosure of Rohrig, it is respectfully submitted that claims 1-23 are patentably distinct from Rohrig and Rohrig DE. Reconsideration and withdrawal of the rejection of record for claims 1-23 are respectfully requested.

Claims 1, 10-15, and 23 stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by U.S. Patent No. 6,325,236 to Wong ("Wong"). This ground of rejection is clearly overcome by the amendments to claims 1 and 23.

As discussed above with respect to Rohrig, Wong also fails to disclose an embodiment having a valve body with multiple walls, where a first wall collapses first and a second wall collapses second, and where the second wall must collapse to provide fluid communication between the valve seat and valve body. In contrast to the intimations of the Office action, a simple recitation of a resilient seal 300 does not in and of itself disclose a staggered wall collapse that provides fluid communication between a valve seat and valve body. Applicants respectfully request citation of the disclosure of Wong that allegedly discloses such a limitation as specifically recited in claims 1, 10, and 23 if the foregoing rejection is sustained.

In light of the clear deficiencies in the disclosure of Wong, it is respectfully submitted that claims 1, 10-15, and 23 are patentably distinct from Wong. Reconsideration and withdrawal of the rejection of record for claims 1, 10-15, and 23 are respectfully requested.

Claims 16-18 stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by U.S. Patent Application Publication No. 2005/0072788 to Lieberman ("Lieberman"). This ground of rejection is clearly overcome by the amendments to claims 16-18.

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As discussed above with respect to Rohrig and Wong, Lieberman also fails to disclose an embodiment having a valve body with multiple walls, where a first wall collapses first and a second wall collapses second, and where the second wall must collapse to provide fluid communication between the valve seat and valve body. In contrast to the intimations of the Office action, a simple recitation of a resilient upper portion 128 does not in and of itself disclose a collapsible tower mounted to a valve assembly and adapted to selectively restrict fluid flow through the radial passageway by collapsing a first wall adjacent to the passageway after a second wall spaced from the passageway collapses. Applicants respectfully request citation of the disclosure of Lieberman that allegedly discloses such a limitation as specifically recited in claims 16-18 if the foregoing rejection is sustained.

More specifically, Lieberman fails to disclose a lid having a radial passageway therethrough. The only passage relevant in Lieberman is longitudinal, not radial. The foregoing are only an exemplary limitations not disclosed by Lieberman, suffice it to say that Lieberman clearly does not anticipate Applicants' claims 16-18.

In light of the clear deficiencies in the disclosure of Lieberman, it is respectfully submitted that claims 16-18 are patentably distinct from Lieberman. Reconsideration and withdrawal of the rejection of record for claims 16-18 are respectfully requested.

Conclusion

In light of the foregoing, it is respectfully submitted that claims 1-23, now pending, are patentably distinct from the references cited and are in condition for allowance. Withdrawal of the rejections of record are respectfully requested. The Commissioner is hereby authorized to charge the additional fees required by this response, or to credit any overpayment to Deposit Account 50-3072.

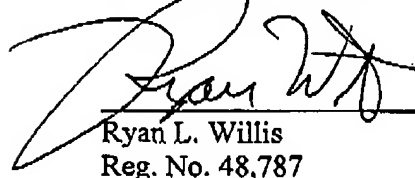
In the event that the Examiner wishes to discuss any aspect of this response, please contact the undersigned at the telephone number indicated below.

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Respectfully submitted,



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